UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Case No. 05-44481
DELPHI CORPORATION, et al,	:	
	:	One Bowling Green
	:	New York, NY
Debtors.	:	January 5, 2006

TRANSCRIPT OF OMNIBUS HEARING
BEFORE THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

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(Appearances continued on next page)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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(Appearances continued on next page)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE COURT: Please be seated. Okay. Good morning. Delphi Corporation.

MR. BUTLER: Good morning, Your Honor. Jack Butler, Kevin Murphy, David Springer and Tom Matz here today on behalf of Delphi Corporation for its January omnibus hearing.

Your Honor, we have filed a proposed third omnibus hearing agenda. It has been served in accordance with the case management order and has been posted on Delphidocket.com, and it is the agenda we'd like to use today if that's acceptable to the Court.

THE COURT: That's fine.

MR. BUTLER: Your Honor, the first matter on the agenda under the continued or adjourned matters is the interim -- what's remaining of the interim compensation motion at Docket No. 11. The remaining item deals with the appointment of a fee committee in these cases.

The first fee statements in these cases were submitted at the end of last week. There is a meet and confer that is planned to occur during the month of January between the creditors committee, the debtor and the U.S. Trustee. The U.S. Trustee did file an objection to the appointment of a fee committee in these cases arguing that it may not be warranted.

We've agreed with the U.S. Trustee to adjourn this matter to the February 9th hearing and try to work out a process for the appointment of a committee between now and

then. The debtors believe a committee ought to be appointed in these cases, and absent being able to resolve any issues during the meet and confer, our intention would be to proceed with the motion at the February 9th omnibus hearing.

THE COURT: Okay. That's fine. I -- I mean, these are obviously large cases, and as evidenced by the number of people in the courtroom, they attract a lot of lawyers, appropriately, and my experience has been that it is worthwhile to have some specific oversight over fees involving the U.S. Trustee, sophisticated consumers of legal services on a creditors committee and the debtors.

And I think the only real issue is the cost of involving a third party in that process and generally, my experience with regard to such third parties is that they provide some benefit because they have their computer programs where they check billing records but that they don't have the type of sophistication necessarily that the other parties do.

So maybe there's a way to split the issue along those lines.

MR. BUTLER: Your Honor, the -- two co-fiduciaries and the trustee have I think some constructive conversations about this, and they have agreed to meet to try to resolve this, and I would -- I'm reasonably optimistic that there will be a resolution.

THE COURT: Okay. Thank you.

MR. BUTLER: Your Honor, the second matter on the agenda, Agenda Item No. 2 is the KECP motion. This is Docket No. 213. There had been a previous agreement to adjourn the motion to the January 27th specially set hearing.

We have been engaged for the last month or so in a dialogue with the creditors committee who has engaged a separate compensation consultant to review the KECP program and to work with our compensation consultant. In fact, there's a meeting scheduled between the compensation consultants for tomorrow to continue to work on the structure, scope and other details relating to the program.

In the course of those discussions between the creditors committee and the company, we would -- had agreed that the January 27th hearing ought to be very narrowly focused on the annual incentive program for the period end of June 30th of this year, and that the balance of the motion which would involve the annual incentive plans beyond June 30th and the proposed cash equity incentive emergency awards, the debtors are prepared to adjourn that to the July 2006 omnibus hearing, and we've extended the objection deadline for the creditors committee.

All the other objection deadlines have passed in this case, but we want to be able to continue to work with the committee and their compensation consultants. The goal here between the company and the committee is to arrive at a program

that is mutually acceptable to the two -- to at least the debtors and creditors committee and then hopefully we can resolve the remaining objections that have been filed.

THE COURT: Okay. Obviously, the motion as originally filed was a lightning rod, and I just want to make sure that you've given notice to the objectants that the only thing that's currently contemplated to go forward at the next hearing is that limited portion of the motion. So --

MR. BUTLER: We have --

THE COURT: -- they won't show up to argue the whole thing.

MR. BUTLER: Your Honor, we have communicated with each of the objectors. We also have posted that information on Delphidocket.com generally, and so that information is there.

We understand that there -- you know, there are I think ten or so objections that have been filed in connection with the program, and I'll not address the merits of the motion at this point.

THE COURT: No, that's fine. Okay. Thank you.

MR. BUTLER: Your Honor, the next set of matters are matters that I think Mr. Berger is going to address.

MR. BERGER: Good morning, Judge. Neil Burger, Togut Segal for the debtors.

We have a number of matters in sequence on the calendar. Number Three is Specmo Enterprises. This is a

demand by Specmo to set off -- they assert that Delphi owes Specmo a little more than half a million dollars and that there's a reciprocal claim of more than $350,000. Debtors have completed the reconciliation of these competing claims. They forwarded it to Specmo's counsel who has forwarded it to his business folks, and we're hopeful that before the next omnibus hearing date, this matter will be settled.

So, with Your Honor's consent, this matter should be adjourned to February 9th.

THE COURT: Okay. That's fine.

MR. BERGER: Thank you, Judge.

The next matter is Schmidt Technology. This is an order to show cause that the debtors sought and had entered by Your Honor, Docket No. 477, and the order to show cause directs Schmidt to show cause why it should not be held to have violated the automatic stay for having demanded and obtained a post-petition payment on account of pre-petition obligations.

There is a constant and open dialogue and exchange of information between the parties on this matter, Your Honor. Schmidt is asserting that it is a foreign vendor, foreign creditor under Your Honor's prior order and is seeking that status.

We're nearing completion of informal discovery and legal research, and again, we're hopeful that this matter as well will be settled. If not, we'll report back to Your Honor

on February 9.

THE COURT: Okay.

MR. BERGER: DBM Technologies, Number 5 on the agenda like Specmo is a setoff demand. The debtors have completed their reconciliation of the competing claims. We've sent it off to DBM's counsel in Detroit. They've shared it with their client. I would expect in the next week or so this matter will be settled, and as the agenda reflects, we'd like to have this matter adjourned to the February 9 date.

THE COURT: That's fine.

MR. BERGER: JST Manufacturing -- I'm sorry, Entergy, Number 6, Entergy filed a motion for authority to set off or recoup against a six-hundred-thousand-dollar payment that it obtained within ninety days prior to the petition date.

The debtors filed a response last week, Docket No. 1662. Entergy has expressed a desire to file a response. There are factual issues in play. We have agreed that they could file a response. It would be filed on or before a week from tomorrow.

We'll look at that response. If there are factual issues, there may be some discovery, but in the interim, Your Honor, we'd like to adjourn this to February 9.

THE COURT: Okay.

MR. BERGER: JST Manufacturing is Number 7. It's an order to show cause, again, seeking -- directing JST to show

cause why it should not be held to have violated the automatic stay for having received a post-petition payment on account of pre-petition obligations.

As I understand it, JST is a small Japanese enterprise and, in the beginning, there may have been some language barrier. Most recently, JST has asserted that they should be treated as a foreign vendor, and perhaps more significantly, they've asserted a financial inability to respond to this order to show cause by having to disgorge the funds.

They had promised me expect within the week documents concerning their corporate structure to go to the issue of whether or not they're a foreign vendor and also some financial information to see whether or not we're chasing something that simply won't happen.

THE COURT: Okay.

MR. BERGER: This matter should be adjourned as we requested in the agenda to the February 9 hearing.

THE COURT: All right.

MR. BERGER: And that's a break for my matters for the moment.

THE COURT: Okay.

MR. BUTLER: Your Honor, Number 8 on the agenda is the Pullman Bank and Trust Company motion. Pullman alleges the debtors have failed to make certain post-petition payments on

leases held by the bank, and therefore, the bank moved for various relief under the motion.

Your Honor, the debtors have disputed with Pullman that those assertions are accurate. The debtors believe they have made -- they're in full compliance with the leases, and the parties have agreed to try to reconcile the underlying factual record here and try and sort out any remaining disputes, and therefore, would request that this matter be put off to the February 9th omnibus hearing.

THE COURT: Okay.

MR. BUTLER: Mr. Berger?

MR. BERGER: Next on the calendar, Your Honor -- excuse me, Neil Berger for the debtors.

Number 9, Furukawa Electric North America. This is a motion by Furukawa for authority to set off against a payment of approximately $2.3 million that it received on October 4, 2005.

This motion was filed just before the holidays, Your Honor. Our client needs a little bit of time and an opportunity to look at the facts, and we requested and Furukawa consented to request Your Honor adjourn this matter to the February 9 date.

THE COURT: Okay.

MR. BUTLER: Your Honor, Matter No. 10 on the agenda is a case management amendment motion filed with Docket No.

1556 filed by the creditors committee which the committee seeks to amend various aspects of case management in these Chapter 11 cases.

The United States Trustee, the creditors committee and the debtors have agreed to a meet and confer on this matter to try and sort out what procedural changes, if any, we can all consensually agree to and then recommend to the Court for the Court's consideration. Otherwise, we'll file responses and the matter would be heard at the February 9th hearing.

THE COURT: Okay.

MR. BUTLER: That's -- that's the status.

THE COURT: All right. There was a similar modification I guess in the Refco case that I'm pretty comfortable with, and your colleagues in that case were too. So maybe that can be a model.

I mean, it wasn't major, but it just streamlined things a bit vis-a-vis the committee.

MR. BUTLER: Thank you, Your Honor.

Your Honor, Matter No. 11 on the agenda is a motion filed by Appaloosa Management, LP asking this Court to appoint an equity committee in the Chapter 11 case that's filed in Docket No. 1604.

This motion was filed while the United States Trustee had a similar request from Appaloosa under its consideration and had not reached a determination. The debtors asked

Appaloosa if they would put this matter off for a few weeks. Appaloosa had sought some extensive discovery and we've got issues relating to the discovery they wanted to put in place.

The debtors also believed it was appropriate for the schedules of -- the schedules and the statements to be filed in these cases. They will be filed in accordance with Your Honor's order by January 22nd, and the 341 meeting in these cases is being conducted by the United States Trustee I believe on February 3rd.

Our agreement with the -- with Appaloosa is to ask for a date not earlier than January 30th, 2006 for this matter to be heard. I'm advised by Appaloosa that they have a scheduling conflict with the February 9th hearing, and they asked for a special setting sometime after January 30th, but as soon thereafter as Your Honor could find time.

We're certainly prepared to -- we've talked with chambers, we're prepared to, you know, continue to consult in trying to find a mutually acceptable date if that's acceptable, Your Honor.

THE COURT: Okay. Sometime in February.

MR. BUTLER: I think Mr. Berger has I think the next set of matters.

MR. BERGER: Judge, Neil Berger for the debtors. Moving into the uncontested and settled matters, Number 12, the Lee Company, this was an order to show cause Your Honor issued

concerning a fifty-eight-thousand-dollar payment that Lee obtained post-petition on account on pre-petition obligations. Lee is a supplier to the debtor, and this matter has been settled, and I have an order that I'll hand up in just a moment.

The significant elements of the settlement is that Lee will continue to ship to the debtor. The debtor will move separately to assume this agreement. The $58,000 will be applied toward cure obligations on the assumption. To the extent that cure obligations don't consume the full $58,000, the balance will be applied solely to the post-petition obligations of the debtor.

So the harm has been completely remedied.

THE COURT: Okay.

MR. BERGER: The next matter --

THE COURT: That's -- I'll approve that.

MR. BERGER: I'm sorry. Thank you, Judge.

The next matter, Number 13 is Proto Manufacturing, also an order to show cause, challenged a three-hundred-and-forty-thousand-dollar payment that Proto obtained post-petition on account of pre-petition obligations. This matter has also been resolved, Your Honor.

Proto has agreed that the full amount of the transfers will be credited solely to post-petition obligations and barring anyone here in court today or questions from Your

Honor, we'd ask that Your Honor approve that one as well.

THE COURT: I'll approve that.

MR. BERGER: Your Honor, I have orders -- I believe they're --

THE COURT: Why don't you leave them up with chambers.

MR. BERGER: I'll do that, Judge. Thank you.

MR. BUTLER: Matter No. 14 on the agenda at Docket No. 997 is the debtors' motion authorizing debtors to obtain preferential power rights pursuant to a letter agreement with Niagara Mohawk Power Corporation and to assume that agreement.

Your Honor may recall that we adjourned this from a prior hearing in order to give an opportunity for the New York Power Authority Board of Trustees to consider this matter which occurred on December 13th, and on that date, the New York Power Authority Board of Trustees approved the various transactions needed to implement the agreement that's before Your Honor.

Simply stated, Your Honor, if the Court approves this transaction and allows us to consummate it, we would be able to obtain valuable low-cost electricity at significantly discounted rates for the duration of the power contracts.

That assumption will save according to the debtors' estimate approximately $50,000 a month over the terms of the contracts, and the -- and the term of the contracts range from ten months to as long as seven years from today's date.

We've reviewed this matter with the creditors committee. No objections have been filed. Unless Your Honor wants additional information, we'd ask --

THE COURT: I just -- this is not really an assumption under 365 because the debtors weren't really a party to these contracts, right? They're basically being substituted in for --

MR. BUTLER: There's going to be an assignment and then we're assuming the contract --

THE COURT: Okay. All right. And that's why you're paying the extra money --

MR. BUTLER: Correct, Your Honor.

THE COURT: Okay. I'll approve it. It's clearly a good deal.

MR. BUTLER: Thank you, Your Honor.

Your Honor, Matter No. 15 on the agenda is the application of the creditors committee for the appointment of Latham and Watkins as counsel on Docket No. 1086. This has been adjourned to allow the debtors an opportunity to complete their review of the application.

We have done so. The debtors support the retention application and we have no other further comments.

THE COURT: Okay. I've reviewed it and I will approve the retention.

MR. BUTLER: Your Honor, just taking a clue off your

conversation with Mr. Berger, do you want us to submit all the orders to chambers after the hearing?

THE COURT: Yes, that's fine. And on that subject, while I'm normally happy to have proposed orders emailed to chambers, when we have a big omnibus day, it's probably better to just bring them on a disc to chambers, particularly since Ms. Li has been out. It's just easier to have the disc.

MR. BUTLER: Thank you. And we have discs with us today, Your Honor.

THE COURT: Okay. Thanks.

MR. BUTLER: Mr. Berger, I think the next is yours.

MR. BERGER: Neil Berger for the debtors.

Your Honor, Number 16 on the calendar is AMR Industries, an order to show cause, Docket No. 1090. This is another order to show cause that the debtors ask to be entered to challenge a small payment of about $6,600 made to AMR post-petition on account of what was believed to have been all pre-petition obligations.

JST -- I'm sorry, AMR asserted that not all of the funds were intended to satisfy pre-petition obligations. After some informal discovery and some diligence, the debtors and we concluded that this creditor was right. Only about $2,100 was on account of pre-petition obligations. The matter has been settled, and we have an order to drop off in chambers pursuant to which the $2,100 will be returned to the debtors on or

before January 13th. The balance is to pre-petition obligations.

While this is a small amount, it should reflect the debtors' commitment to the continued integrity of the order to show cause process that Your Honor put in place and has been effectively enforced.

THE COURT: Okay. I'll approve that.

MR. BERGER: Thank you, Judge.

Number 17 is Pepco Energy Services. Pepco filed a motion for relief from the automatic stay. Pepco and the debtors are parties to a sales agreement, pursuant to which energy utility services provided to the debtors' New Brunswick, New Jersey manufacturing facility where approximately 425 people are employed, it's an important component of our manufacturing structure.

The relief from stay sought three alternative forms of relief. The first was relief from the stay to serve a termination notice to terminate the sales agreement and potentially the utility service. Alternatively, they sought to compel the debtors to assume or reject the agreement.

Pepco -- the debtors filed a response and Pepco was -- without prejudice the two branches of their motion seeking relief from the automatic stay and the -- an order compelling the debtors to assume or reject.

What was left open, Your Honor, was finding some type

of mechanism so that the debtor would be protected. They have significant property interests in this facility, and also Pepco's desire to be protected apparently under certain regulations that they don't serve a termination notice by a date certain late in the month. They're required to provide the utility service through the next billing period whether or not the debtors pay.

We have the framework of a settlement that we reached yesterday, the significant portions of which I can report to the Court are that Pepco has agreed to email invoices to a dedicated email address so that we can be certain to get invoices to the right person on time. The debtors retain their contractual period to pay and to cure any defaults.

And Pepco would have the opportunity to seek relief from the automatic stay. The concern was that we didn't want to have a utility provider terminating service without coming before the Court on notice to the appropriate parties.

They'd be able to seek entry of an order modifying the stay to serve a termination notice on three business days' notice, and that would have to be emailed or faxed to us, and what that does, Your Honor, is that it gives the debtors an opportunity to come back to the Court in case there's some type of dispute about the default that Pepco is concerned about.

So, having said all that, Your Honor, I think we've resolved all the issues in this motion. We're protecting the

debtors' interest. We're ensuring that Pepco gets paid on time.

THE COURT: Okay. So you're going to submit an agreed order later this month or --

MR. BERGER: Hopefully, within the week, we'll have a stipulation to submit to Your Honor.

THE COURT: Okay.

MR. BUTLER: Your Honor, the other matters on the agenda we'd like to take together, Matters No. 18 and 19 and 20 on the agenda.

Matters 18 -- Matter 18 is the application of the creditors committee for the retention of Warner Stevens, LLP as conflicts counsel found at Docket No. 1170.

Matter 19 is the application of the committee to retain Mesirow Financial Consulting, LLC as financial advisors to the committee and that is at Docket No. 1335.

And Matter No. 20 is the application of the committee to retain Steven Hall as compensation consultants. That's at Docket No. 1399.

Taking Matter 20 first, there is an open issue that the committee and the U.S. Trustee are working out relating to an indemnity matter, and we're not prepared to present an order today to Your Honor but the request would be to have this carried to the February 9th omnibus hearing, but the expectation would be that there would be a consent order

submitted between -- before that time between the U.S. Trustee and the creditors committee --

THE COURT: This is Steven Hall and Partners?

MR. BUTLER: This would be -- yeah, Number 20, correct.

THE COURT: Okay. All right. That's fine.

MR. BUTLER: As to Matter 18 and 19, Your Honor, there have been no objections filed. The debtors have reviewed these papers as well in support the motions of the creditors committee. There has been an amended order in Matter No. 18 in Warner Stevens to simply make the conflicts counsel retention mirror the same -- the debtors' order appears and so there's an amended order in that respect.

THE COURT: Okay. All right. I reviewed these applications including the supplemental affidavit by Mesirow regarding their screening procedures and I'm comfortable that they'll live up to those procedures, that they're disinterested.

So I'll approve both of those retentions.

MR. BUTLER: Your Honor, I should also point out just so that there's a record on this. These applications are nunc pro tunc to the actual retention date for each of the individual firms and the debtors support that.

THE COURT: Right. And I -- given the review process that they've undergone that nunc pro tunc retention is

appropriate.

MR. BUTLER: Thank you, Your Honor.

Your Honor, Matter No. 21 is a procedural matter. Umicore Autocat Canada Corporation has filed a motion to substitute an exhibit that was attached to their file notice of reformation demand. They filed the motion in Docket No. 1543.

Umicore does not wish to change its substantive material but to submit a redacted version of the exhibit contained in the file and published to the ECF in order to protect the information.

We've reviewed the exhibit. We have no issue with the matter at all, and so we don't oppose the motion and are comfortable with the relief requested.

THE COURT: And it provides for the pulling of the current exhibit?

MR. BUTLER: Yes, Your Honor.

THE COURT: Okay. All right. Hearing no opposition, I'll approve that.

MR. BUTLER: Thank you, Your Honor.

Your Honor, the next matter before the Court is the debtors' first exclusivity motion seeking an extension of time to file and solicit acceptances and solicit acceptance of the plan of reorganization that's filed at Docket No. 1549.

Your Honor, the debtors publicly disclosed at the outset of these cases that our strategic organization timetable

targeted emergence from Chapter 11 sometime in the first half of 2007, about fourteen to sixteen months beyond the current period of exclusivity and the debtor has, in fact, had discussions with the creditors committee about having a lengthy extension of the exclusivity period to mirror that timetable.

In -- we believed that it was most important in this first extension even though the Court and I think other parties should know that we'll be coming back. We thought it was most important if we could to have a consensual path and framework with the creditors committee and with other major stakeholders, and we have therefore agreed with the committee that the initial extension should be from February 6th, 2006 to -- and April 7, 2006 to August 5, 2006 and October 4, 2006, respectively and without prejudice of our rights to seek further extension.

So the time for filing a plan would go from February 6th to August 5th, and the solicit would go from April 7th to October 4th. These periods would apply to all the debtors including the debtors that filed a few days later than -- the three debtors that filed a few days later than the majority that filed on October 8th.

And we have obtained the concurrence of the dip lenders and the pre-petition administrative agent as well to that timetable, and that's what we're here before the Court to ask today.

THE COURT: Okay. Does anyone want to address this motion?

All right. Hearing no one and noting that there are no objections, I'll approve it. I assume you will be coming back, but I think it's -- it's worthwhile to have to come back, you know, in a case like this.

MR. BUTLER: Thank you, Your Honor.

Your Honor, the Matter No. 23 is a procedures motion. It is a motion asking for authority to approve procedures for rejecting unexpired real property lease and authorizing the debtors to abandon certain furniture, fixture and equipment.

This lease rejection procedures motion was filed at Docket No. 1551.

As part of the debtors' restructuring efforts, the debtors were undertaking a comprehensive evaluation of the economic value of their unexpired non-residential real property leases and we've indicated to parties of interest in the court from the first day of these cases that one of the debtors' principal goals in filing these Chapter 11 cases was to achieve competitiveness by realigning Delphi's global product portfolio and manufacturing footprint.

And, in doing so, we may need to reject certain leases. There's only one objection that was filed to this motion. It was an objection by an entity called Orix Warren. They agreed to -- they objected to certain of the notice

procedures and sought an administrative expense claim in connection with abandonment matters.

We've resolved those -- that objection and have agreed that any notice of rejection that relates to the lease for 455 One Research Parkway in Warren, Ohio would be served in a specific manner as set forth in the revised order, and we also agreed that -- to certain other relief with respect to Orix Warren including how we would deal with certain of the property and the reservation of rights with respect to abandonment.

Your Honor, General Electric Capital Corporation also informally raised concerns about the application of this order to General Electric's equipment lease, but this procedure are not intended to address anything other than non-residential real property leases, and we resolved GE's concern by including language that made it specific that these -- this -- these procedures do not apply to General Electric.

We also agreed to the creditors committee request that Saturdays and Sundays be excluded in determining the ten-day notice period related to giving notice to the committee, for example, under the -- the notice provisions, and we agreed to that, and that language has also been put in the order.

So, without going through all the procedures, Your Honor, essentially this process allows us to rationalize our real estate portfolio by giving notices to the -- to the

directly interested parties and the committee and the U.S. Trustee in going through a process. If no one has a problem with that, we don't need to keep coming back to court.

THE COURT: Okay. Who did -- did you serve all the real property lessors --

MR. BUTLER: Yes.

THE COURT: You did. Okay. All right. And, as I read it, it really is a notice procedure, primarily, and then obviously it imposes certain results on those who don't object. If you do object, the issues are to be resolved by me.

MR. BUTLER: That's correct, Your Honor.

THE COURT: Okay. All right. Based on that, understanding that again there are no objections, except the ones you resolved, I'll approve it.

MR. BUTLER: Thank you, Your Honor.

Your Honor, the next matter on the agenda is Matter No. 24. This is our motion seeking authority to assume an executory contract with Pillarhouse USA found at Docket No. 1553, and Your Honor, this is directly related to the decision Your Honor made at the last omnibus hearing which set a time to assume or reject, and the net result if Your Honor approves means that in addition to being paid the post-petition equipment installation charge of $3,950, Pillarhouse will also receive the pre-petition equipment costs payment of 73,594.60.

THE COURT: Okay. All right. I reviewed the motion,

and, obviously, Pillarhouse was necessary. So I'll approve it.

MR. BUTLER: Thank you, Your Honor.

Your Honor, Matter No. 25, another procedural motion. This is a motion to extend the time within which the debtors may remove actions, and we're seeking an order extending by an additional ninety days the period during which the debtors may remove actions under 28 U.S.C. 1452 and Bankruptcy Rule 9027.

We're asking the Court to enter an order that would authorize us to remove actions pending on the petition date to the later of April 6th, 2006 or thirty days after entry of an order terminating the automatic stay with respect to any particular action that's sought to be removed.

The order also provides that this is without prejudice to us seeking further extensions of the period, and Your Honor, we actually planned to seek further extensions of the period.

This first extension was for a short period of time that would not prejudice all the parties. It was done on an expedited notice procedure in that not every party to every piece of litigation received notice of this because as we're preparing the schedules and the statements and so forth, trying to put all that together has been sort of a massive undertaking, and we believe that there was -- there would be no prejudice to having a brief extension by serving the master service list, the 2002 list and otherwise, providing that type

of notice.

We will, at least, when we seek a longer extension in connection with some 200 or more judicial and administrative proceedings currently pending across the United States, we will in connection with a longer extension serve each of the litigation parties as we move forward, but I did want Your Honor to understand that the notice procedure for this particular matter, which is why we've limited the request for the extension to ninety days.

THE COURT: But you did serve the 2002 list?

MR. BUTLER: We did, Your Honor. Anyone who has sought notice in this case has gotten notice --

THE COURT: Right. And I didn't see any objections.

MR. BUTLER: There have been no objections filed.

THE COURT: Okay. I'll approve this in light of the number of litigations that the debtors have to consider.

MR. BUTLER: Thank you, Your Honor.

Your Honor, Matter No. 26 on the agenda, again, another procedural motion. This is a lease renewal motion found at Docket No. 1555, and just as, Your Honor, there may be leases that we don't want to stick with, there also are leases that we may want to renew and continue to move forward in.

And without getting into the issue of whether this is ordinary course or not ordinary course, we thought that the better procedure here was to work out a settlement procedure

with the creditors committee on how we would deal with lease renewals. The guidelines are set forth in the proposed order. There have been no objections filed by any party, and this will eliminate any doubt about how we'll deal with real property assets of the estate.

THE COURT: Okay. I had one comment here which is that Paragraph 3 which says that for lease obligations of 200,000 or less per annum or one million in the aggregate wouldn't apply to leases with insiders and that that would be covered by Paragraph 4.

MR. BUTLER: Yeah. I --

THE COURT: I don't know if there are any, but I just -- you know, I'd rather you give notice to the notice parties in Paragraph 4 if you're going to be --

MR. BUTLER: Not an issue, Your Honor.

THE COURT: Okay.

MR. BUTLER: I don't think any of these are insider leases, but I understand the comment.

THE COURT: Okay.

MR. BUTLER: Is the motion otherwise acceptable?

THE COURT: Yes, otherwise, it's granted -- yes, it's granted.

MR. BUTLER: Thank you, Your Honor.

Your Honor, Matter No. 27 is the debtors' insurance renewal motion. This is a motion authorizing the renewal of

insurance coverage and certain related relief found at Docket No. 1559. We are seeking an order among other matters that would authorize but not direct us to renew or enter into new insurance policies with ACE American Insurance Company and affiliates and execute and deliver related documents and agreements.

This is a fairly complex motion, Your Honor, but the long and the short of it is that we have a tiered insurance program at Delphi, which provides a significant amount of coverage for general liability, products liability, automotive liability and workers compensation claims, and ACE is the foundation of that tier. So the excess layers don't operate without having that tier in place, the -- what I'll call the foundation tier involving ACE.

ACE has asked us to assume the agreements with them and to assume the obligations with them and particularly as it relates to workman's compensation matters because there's a self-insured aspect of that program. There's a collateral pool that we provide them that needs to be updated. They have cash. They'd like a letter of credit for some of those matters.

And the way I sort of boil this down is that when you -- if you approve this transaction when the dust clears, we'll provide them with an additional approximately $10 million in additional collateral to protect workman's compensation arrangements primarily as we replace cash funds with letters of

credit and give them additional letters of credit.

And, because of our obligations under the way the insurance policies work, there are actuaries that sort of assume -- you know, estimate what the actual liability will be under these programs and depending upon what degree of conference you want to have and what the ranges are, we understand from the actuaries that have given advice to our insurance agents and to our insurance risk management group that if things did not go well in the risk pool, we might by assuming this policy have as much as three or four, five million dollars of additional exposure on a worst-case basis as -- at least as AON has given advice to the company through its agents.

And the long and the short of this from the company's perspective, and I can go through each aspect of this policy, but we have reviewed it with the creditors committee. No objection has been filed. It's very important that we keep our general liability, products liability, automotive liability, and workman's comp programs in place, and we need to have the foundation tier in place.

ACE had given us a brief nine-day extension to move forward with this policy. Originally, when the case was filed, ACE had indicated they were not prepared to renew. We got them to go to the end of December and then again to go into the new year because we wanted to take some time to put this program

together, explain it to the committee, go through the due diligence necessary in connection with this.

ACE cooperated and gave us a short-term extension so we could bring this matter before the Court today.

THE COURT: Okay. So am I right then that although there may be additional liabilities under the agreement as the claims are actually processed and dealt with, there's no other cure liability per se. It's just there may be additional liabilities under the agreement?

MR. BUTLER: That's correct, Your Honor. What happens we're adding about -- I'm rounding, but we're adding about $10 million more collateral to the pool right now.

My understanding is that under a worst-case scenario that if things didn't work out in terms of pre-petition periods, that collateral pool could be exhausted and we may have an exposure also on this record of additional 5 million. I'm told it's slightly less, and they told me it's worst case, but that's the estimates that -- and that's all based on estimates from AON. I mean, you know, these are all estimates, Your Honor. The actual facts can change, but that's the -- that's the anticipation.

So the "cure claim" if you think about it from a cure claim perspective in a worst-case scenario we're estimating could be approximately 3.1 million, but that's -- there's a series of assumptions that go there, and it is nothing more

than an assessment. It's not a --

THE COURT: These would be fixed as the contracts play out and as they would normally.

MR. BUTLER: Correct, Your Honor.

THE COURT: Okay. All right. Again, I had one small comment on this other than wanting to have you answer that question, which is Paragraph 3 of the order says the debtors are authorized to renew or enter into insurance policies going forward, and I understand that that was something that the insurers wanted in the agreement, and I don't have any problem with that if it's in the ordinary course, and I think it's really a truism anyway, but, you know, if entering into a new policy meant, you know, incurring a large obligation for something that alters this agreement for pre-petition activity or something like that, I'd be uncomfortable.

So I think putting it in the ordinary course of their business is appropriate here.

MR. BUTLER: We'll add that, Your Honor.

THE COURT: Okay. All right. Other than that change, I approve the motion.

MR. BUTLER: Thank you, Your Honor.

THE COURT: So there's no coverage gap then, right?

MR. BUTLER: No.

THE COURT: The extension goes through the --

MR. BUTLER: Yes. We'll be able to put this in place

Your Honor, and meet the requirements that ACE has imposed.

THE COURT: Okay.

MR. BUTLER: Mr. Berger has the next matter, Your Honor.

MR. BERGER: Neil Berger for the debtors, Judge.

Number 28 is Constellation Newenergy. This is an unopposed motion by Constellation Newenergy for relief from the automatic stay to set off against a two-hundred-fifty-thousand-dollar prepayment that it received pre-petition.

This is in contract to the Entergy matter that I mentioned earlier, Your Honor. In that situation, the debtors' understanding is that Entergy obtained a deposit within ninety days prior to the petition date. Having looked at the Constellation agreement, we have determined and now agree with Constellation, this was a contractually required prepayment. So --

THE COURT: That explosion your hear is just people working on a subway spur.

MR. BERGER: This may not even have been ready or actually ripe for set off. I suppose they did it for prophylactic reasons. We have no objection. We've discussed the matter with counsel for the committee, and we have an agreed-upon order that we'll hand into chambers.

THE COURT: Which -- which basically lets them set off?

MR. BERGER: Correct, Judge.

THE COURT: Okay. All right. I'll approve that subject to reviewing the order.

MR. BERGER: Thank you.

THE COURT: Okay.

MR. BUTLER: Your Honor, the next matter on the agenda, Matter No. 29 is a reclamation deadline extension motion that we filed at Docket No. 1616.

The relief we're seeking is very limited, Your Honor, and that is we're asking the Court to amend the reclamation procedures order and provide that the time by which the debtors are required to submit statements of reclamation as set forth in Paragraph 2(b)(i) of the amended final order be extended by an additional forty-five days.

The other procedures remain unchanged, and importantly, as Your Honor may recall, once we've gone through a reconciliation process and we're prepared to have a view as to 75 percent or more of the reclamation claims that have been filed, we have an obligation to deliver the creditors committee a detailed reclamation report that provides the company's assessment of that, and prior to their allowance of any claims, there's -- there is a process that occurs between the debtors and the committee.

All that's unchanged, but as we've gone through to try to make assessments of over a hundred thousand different

line items in the claims that have been provided, we found that we just need additional time.

So we're asking for an extension of forty-five days to send out the initial statements. The order provides for a forty-five-day extension. I'd like to actually put a date certain in, which I would propose to be February 21st, 2006.

THE COURT: Okay. And I didn't see any objections to this.

MR. BUTLER: There have been no objections filed, Your Honor.

THE COURT: All right. I will approve it with that date.

MR. BUTLER: Thank you, Your Honor.

Your Honor, the next matter, Matter No. 30 is the final hearing on the claims trading motion and my partner, Mr. Springer will present that matter.

MR. SPRINGER: Good morning, Your Honor. David Springer for the debtors.

Your Honor, the next matter on the agenda is the debtors' motion for an order establishing notification and hearing procedures for trading and claims and equity securities. We refer to this as the "final trading order."

Briefly, on October 8th, 2005, the debtors filed a motion to establish notification procedures and to approve restrictions on certain transfers of claims against an equity

interest in the debtors in order to preserve the debtors net operating loss carry forwards and certain other valuable tax attributes.

On October 11th, 2005 at the first-day hearings, certain investment banks objected to the motion, and then the next day on October 12th after discussion with the objecting parties, the debtors agreed to revise the order, and the Court entered the order on an interim basis, and we refer to that October 12th order as the interim order.

Notice of the interim order was served upon virtually every creditor and equity holder of the debtors, and it was also published in each of The New York Times and The Wall Street Journal.

Subsequently, two parties, Appaloosa Management, LP and DC Capital Partners, LP filed objections to the interim order and several other parties including the creditors committee lodged informal objections or contacted the debtors to discuss the terms of the order and to voice their concerns or questions.

The debtors engaged in extensive negotiations with all these parties and developed a revised trading order to resolve those objections and comments, and then just before Christmas on October -- on December 23rd, 2005, we served notice of a proposed final order which the debtors believe reflected resolutions of various objections while preserving an

asset of the debtors, the tax value of which could exceed $1 billion.

Last week, Wilmington Trust lodged an objection to the proposed final trading order, and over the past few days, we've made additional changes to address Wilmington Trust and others' concern, and we believe that all of the objections and the concerns have now been resolved.

THE COURT: Can I interrupt you. Who did you serve notice of the proposed final order on?

MR. SPRINGER: It was the -- the master service list --

THE COURT: Okay. It wasn't just the objectants and the informal objectants.

MR. SPRINGER: No. No, that's right, Your Honor.

THE COURT: Okay. All right.

MR. SPRINGER: Accordingly, the debtors believe that all the objections and informal concerns that have been raised with regard to the final trading order have been resolved. I understand that counsel for Appaloosa Management, DC Capital Partners and Wilmington Trust are all present in the courtroom this morning and can confirm that their concerns have been addressed and that their objections are now withdrawn.

Silence being consent, Your Honor?

THE COURT: Well, I see people nodding. Maybe they want to say something.

MS. FAINMAN: Good afternoon, Your Honor. I'm Jessica Fainman from Schulte, Roth, and Zabel representing DC Capital Partners, and we are withdrawing our objection.

THE COURT: Okay.

MR. UZZI: Good morning, Your Honor. Gerard Uzzi of White and Case on behalf of Appaloosa.

We've already filed a notice of withdrawal of our objection.

We did reserve the right to be heard with respect to the final order, and we had entered into separate agreements with the debtors with respect to specific relief for Appaloosa under the interim order.

Because of the heavy negotiation of the final order, there's a little bit of ambiguity with respect to our -- our pending agreements over the interim order.

The debtors had represented to us that nothing in the final order is meant to supercede the relief that we received under the interim order. We intend to bring down our agreements under the final order once the final order is entered, and I believe we're pretty close to final resolution on those final orders -- rather, the final agreements --

THE COURT: All right. Because, you know, Paragraph 2 says the final order shall supercede the interim order. So you're saying that as far as Appaloosa is concerned, the debtors have agreed that that's not applicable?

MR. UZZI: Yes. It's my understanding that the debtors have agreed that our agreements under the interim order will apply to the final order --

THE COURT: Okay.

MR. UZZI: -- and we intend and have shared draft separate agreements to make that happen, and as long as that does happen, then we do not have an objection to the entry of a final order.

THE COURT: All right. Then the debtors are in agreement with that?

MR. SPRINGER: That's right, Your Honor.

THE COURT: Okay.

MR. SPRINGER: The interim order anticipated separate side agreements. We gave one to Appaloosa, and we'll be bringing that down.

THE COURT: All right. Well, I guess -- this sort of went to my question about who did you serve because the final order does say it supercedes the interim order without any reservation.

So I guess except as to Appaloosa, the way I read it is that it does supercede it. Unless you have some other understandings with people that I -- that you ought to set out in the record.

MR. BUTLER: Yeah, I think we need to make -- I do think -- you know, counsel for Appaloosa sort of confused the

record a little bit.

The order is superceded. The final order supercedes the interim order.

THE COURT: Okay.

MR. BUTLER: The agreement that was made during the interim period was that we would have separate written agreements and waive --

THE COURT: Oh, all right.

MR. BUTLER: -- with certain parties. We have that --

THE COURT: All right. So your agreement still exists, and they're not superceded, just the order itself.

MR. BUTLER: That's correct, Your Honor.

THE COURT: All right. Okay.

MR. UZZI: But, to be clear, yn, our separate agreement was negotiated in the context of the language of the interim order. There is some ambiguity with respect to the language in this order. The agreement is that the final order does -- there's nothing in the final order that otherwise supercedes our prior agreement.

THE COURT: Okay. That's fine.

MR. UZZI: One other issue, Your Honor, and I'll be very brief.

As counsel has represented, Appaloosa also has a pending motion for the request to appoint an equity committee.

I hope after this hearing to resolve the scheduling issues.

Appaloosa in connection with the NOL order that's before the Court right now represented its own interests and continues to represent its own interest. There's obviously some issues in here that might be of concern to an equity committee if it's appointed. The order is styled the final order. We believe that it's appropriate that -- that the order be entered without prejudice to an equity committee in the event one is appointed.

THE COURT: Well, I don't think that -- they can file whatever they want to file, but I think it would have to be under Rule 60(b) and not under -- not under the terms of the order.

MR. UZZI: Fair enough, Your Honor. I just wanted to raise it for --

THE COURT: I mean, assuming one is appointed. I'm not saying that one should be or -- that's something for the U.S. Trustee to consider in the first instance.

MR. UZZI: Understood, Your Honor.

THE COURT: Okay.

MR. UZZI: Thank you.

THE COURT: Okay.

MR. BROMLEY: Good morning, Your Honor. James Bromley of Cleary Gottlieb on behalf of the ten investment banks that objected on the first day and those objections still

stand.

I wanted to just give a little bit of color as to how we got to where we are. On the first day of this case, there were three pending cases all seeking very similar relief, Northwest, Delta and Delphi.

With this -- the entry of this order, I think it's fair to say that all three cases resolved very similarly. We're very pleased with the results. We'd like to pay a debt to Cliff Gross, the tax partner at Skadden who worked through this over three months to get it done, but we think it's a fair and appropriate resolution of the issues.

THE COURT: Okay. While you're up here, because you and the gentleman standing next to you probably can explain this best. I went through this, it's one of the reasons I was a little late for the hearing, and I think I understand what it's generally doing which is similar to the issues you had raised in your objections: that is, how to enforce this without being unduly burdensome or jumping the gun, if you will.

But I don't understand Paragraph 6(b) which is prefaced now by the phrase "in order to permit reliance by the debtors upon Treasury Regulation Section 1.3(a)(2)-(9)(d)(iii)" (sic) and then it says -- the teeth in the order-- any entity found by the Court to have willfully violated the participation restriction shall be required to dispose of newly traded --

covered claims, but I'm not -- I don't -- my question is what is a "participation restriction."

As I read it, it's not disclosing information to the debtor, which didn't seem to make sense to me.

MR. SPRINGER: It's -- a participation restriction is a restriction against the claim owner telling the debtor in connection with the presentation or preparation of a plan we obtain these claims on a specific date.

THE COURT: Okay.

MR. SPRINGER: And that's something that's prohibited by the Treasury Reg --

THE COURT: All right.

MR. BUTLER: 1.3(a)(2)-(9) --

THE COURT: So this is -- this is a limitation on the general notice issue where there's -- where there is a form of disclosure then.

MR. SPRINGER: That's right.

THE COURT: And it's to comply with this regulation which I guess is designed to prevent tax code manipulation?

MR. SPRINGER: Exactly, Your Honor.

THE COURT: All right. Okay. All right. But this isn't the trigger for the whole order. This is just a specific provision dealing with this specific regulation, making sure it's not breached.

MR. SPRINGER: Correct.

THE COURT: Okay. All right.

All right. Mr. Fox?

MR. FOX: Thank you, Your Honor. Edward Fox with Kirkpatrick and Lockhart, Nicholson, Graham on behalf of Wilmington Trust Company as indentured trustee.

Mr. Springer's statement is correct, we have agreed based on the changes in 6(b) as well as Section 12 to withdraw our objection. Our objection was limited to the Section 6(b) which was added to the final order. It was not in the original language, and we had concerns about that, too.

Ordinarily, trading orders are not something that we generally involve ourselves in, but since this limited -- potentially limited people's participation in the process, we had some concerns about it, and -- and, in fact, this language is slightly different than the LSTA form which limits these requirements to the substantial holders, not to everybody, although the debtor is correct that the Treasury Regulations that are referred to here would apply to everybody and not just the substantial holders.

What we've agreed to -- what the debtors agreed to do is limit the sell-down provision so that it limits and clarifies the remedy that would be involved if somebody violates the provision, and in addition, they've agreed to file an 8-K with this document attached so that there's hopefully some better notice. I mean, somebody buying into this case at

this point or later in the -- in the case would have to wade through several thousand docket entries potentially to find this. Hopefully, they'll have a better opportunity if they're looking on the SEC filings to see it and realize what the obligations are.

THE COURT: Okay. So the debtors will be filing an 8-K with this attached?

MR. SPRINGER: Yes, Your Honor.

THE COURT: All right. Very well. All right.

MR. SPRINGER: There are a few more matters that we'd like to make of record with respect to this motion, Your Honor.

The debtors again want to emphasize that it's critically important to prevent Delphi from undergoing an ownership change under Section 382 of the Internal Revenue Code prior to the effective time of a plan of reorganization.

Such an ownership change could severely limit the debtors' ability to use their valuable net operating loss carry forwards, credit carry forwards, built-in losses and other tax attributes to offset income during the restructuring process and post-confirmation.

For purposes of context, the total tax value of those tax attributes is currently estimated to be well in excess of one billion dollars. Additionally, if there is an ownership change of Delphi, and if the fair market value of the assets of the debtors is less than their tax basis at the time, then for

five years following the ownership change, the debtors' ability to deduct losses from asset dispositions or to take certain depreciation or amortization deductions may be substantially limited.

We want to be clear, Your Honor, that at this point the debtors believe that Delphi has not undergone a Section 382 ownership change. Accordingly, its tax attributes remain available to offset future taxable income. This prospect is of great value to the successful reorganization of these estates.

The final trading order is designed to preserve the debtors' tax attributes and to take full advantage of the special Section 382 bankruptcy rules. One of the special rules under 382 is Section 382(l)(5). We think it's important briefly to explain how this works.

Section 382(l)(5) applies if upon confirmation of a Chapter 11 plan of reorganization at least 50 percent of the stock of the reorganized corporation is owned by preexisting stockholders in what are known as "qualified creditors."

Qualified creditors fall under three categories, those known colloquially as "old and cold creditors," "ordinary course creditors" and those who will own less than five percent of the stock of the reorganized company or de minimis creditors.

If a corporation qualifies under Section 382(l)(5), the general limitation under Section 382 of the Internal

Revenue Code on the use of tax attributes does not apply provided that the corporation does not undergo another Section 382 change of ownership within two years of emerging from bankruptcy.

Your Honor, the final trading order like the interim trading order is intended to prevent an ownership change prior to the emergence of the debtors from bankruptcy and to preserve the possibility of a Section 382(l)(5) plan.

Your Honor, the record should reflect the differences between the interim trading order and a proposed final trading order. On the equity side, the number of shares used to determine whether an entity is or would become a substantial equity holder which is a defined term as used in the order, and thus, subject to the terms of the final trading order has been increased from 14 million to 26.5 million shares or about 4.75 percent of the shares of Delphi stock now outstanding as opposed to two and a half percent under the interim order.

Second, the amount of time that the debtors have to object to a proposed transaction involving an acquisition or disposition of stock at the threshold has been reduced from thirty days as provided in the interim trading order to fifteen days in the proposed final trading order.

On the debt side, the dollar amount of claims used to determine whether an equity entity is or would become a substantial claim holder, also a defined term in the order, and

thus subject to terms of a proposed final -- of the proposed final trading order has been increased 90 percent from 100 million to $190 million.

The interim trading order allow claim holders to freely trade, better warn them of the debtors' intention to formulate a final claims trading order that may require such entities and persons to dispose of claims against the debtors to the extent necessary and proper to protect the debtors' tax attributes under Section 382(l)(5), and that was in Paragraph 4(f) of Your Honor's interim order.

The debtors worked diligently with interested parties over the past three months to formulate a sell-down procedure that allows trading and claims while still preserving the debtors' ability to propose a plan of reorganization that qualifies under Section 382(l)(5).

Your Honor, the debtors believe that with the contributions that we've had by those who have raised objections and other interested parties that the proposed final trading order reflects the state of the art in this area and is in the best interest of the creditors and their estates, and we would respectfully request that the Court enter it.

THE COURT: Okay. I will approve the final trading order. I think it does balance the debtor's need and right to preserve its ability to confirm a plan that protects its tax attributes while also enabling as free a market in the trading

of the securities and claims of the debtor as possible.

So, in light of there being no remaining objections and my own review of the order, I'll approve it.

MR. SPRINGER: Thank you, Your Honor.

THE COURT: I'm also glad that you're going to post the 8-K, because I think that's critical even though the market for these types of obligations and stock probably shrinks in terms of the players. It's still very active, and there may be parties who aren't readily aware of the order's terms. So...

MR. SPRINGER: And that was Mr. Fox's suggestion. He made a substantial contribution --

THE COURT: Okay. I'm not sure you want to use those words.

(Laughter)

THE COURT: Just in a colloquial sense.

MR. FOX: He's a litigator, Your Honor. He doesn't know what he said.

(Laughter)

MR. BERGER: Judge, Neil Berger again for the debtors.

Number 31 on the calendar is Behr Industries. This is a hearing concerning the Court's order to show cause, Docket No. 774 to compel Behr Industries to show cause why it shouldn't be held to have violated the stay for demanding and obtaining a payment in excess of a million dollars post-

petition on account of pre-petition obligations.

Behr has responded, and while the parties continue the negotiations, this one does appear to be headed toward a contested evidentiary hearing. Just broad strokes, Your Honor, Behr has asserted two primary issues. One is financial ability, vendor rescue program, and while that's taken us part of the way, it certainly doesn't take us all the way on the dollars here, and Behr also asserts that while it obtained the payment, it wasn't the cause for the demand for the payment.

The debtors dispute that factually and we don't believe the documents support that allegation. Behr has requested some discovery on the fact issues and we have agreed that a sixty-day discovery window would be appropriate.

With Your Honor's consent, what we would propose is that this matter, today's hearing be adjourned to the March omnibus hearing to function as though as a final or a pretrial conference date, and that I obtain a separate date from chambers as an evidentiary date on a non-omni day.

THE COURT: That's fine. For the pretrial conference, it would be helpful if you and Behr came prepared with what I hope would be a joint pretrial order laying out the witnesses, any anticipated evidentiary issues and an estimate of the length of the trial -- standing pretrial order.

MR. BERGER: Yes, Judge.

THE COURT: Okay.

MR. BERGER: Thank you.

THE COURT: Thank you.

MR. BUTLER: Your Honor, the next matter on the agenda, Matter No. 32 is a motion filed by the lead plaintiffs from the securities litigation for a limited modification of the automatic stay at Docket No. 1063. It is the first of three motions on the calendar, the others being matters -- Matter No. 33 and then again back towards the end of the agenda at Matter No. 37, three contested motions dealing with the lead plaintiffs' attempt to obtain discovery, and we'll cede the podium to them to present the motion.

THE COURT: Okay.

MR. ETKIN: Good morning, Your Honor.

Michael Etkin, Lowenstein Sandler on behalf of the lead plaintiffs as bankruptcy counsel to the lead plaintiffs in the consolidated securities litigation, and I will present the initial matter that's on the agenda for today.

Your Honor, I'd like to begin by stating the obvious, that this is a motion for a limited modification of the automatic stay. It is not a motion seeking to lift the stay so as to proceed against the debtor in connection with the securities litigation.

What the motion does seek are documents that have already been assembled, indexed and produced in connection with various demands for documents by the SEC, by the U.S.

Attorney's Office and the FBI as well as documents produced in connection with the internal investigation commenced by the -- by the debtors.

And, also, again I believe stating the obvious --

THE COURT: I'm sorry. I thought you were -- when you say as well as documents produced as part of the internal investigation, I thought you were seeking only documents that had already been produced to third parties.

MR. ETKIN: That's correct, Your Honor.

THE COURT: Okay. Maybe I just misheard you.

MR. ETKIN: Yeah. That's correct.

THE COURT: Okay. You're saying the third party would include the internal audit committee's counsel?

MR. ETKIN: That's correct, Your Honor, all of course subject to --

THE COURT: So you would count them as a third party --

MR. ETKIN: That's correct, Your Honor.

THE COURT: All right. Okay.

MR. ETKIN: And all, of course, as we've indicated and as has been the case in prior orders entered in this district subject to privilege to the extent that privilege has not been laid.

THE COURT: Okay.

MR. ETKIN: Your Honor, and again, just to make it

clear to the extent that it isn't, we recognize that this is a two-step process that initially we need to get relief from this Court with respect to the limited modification of the automatic stay, and then we need to proceed to get relief from the district court in connection with the PSLRA stay. So this -- this motion really must be viewed in that context.

Your Honor, in the debtors' opposition, I think we've been criticized for relying heavily on previous decisions in Worldcom and Enron which are circumstances that we believe are identical to the circumstances that are raised with respect to this motion, and in relying heavily on previous decisions, we believe that all we've done is do what lawyers are supposed to do, which is rely on precedent coming out of the same district that dealt with not only similar sets of fact, but we believe essentially identical sets of facts.

THE COURT: Were those actually litigated decisions?

MR. ETKIN: Yes, Your Honor. I was involved. So, yes, they were litigated. I was involved in the Worldcom motion and that was litigated, opposed, and Judge Gonzales --

THE COURT: So did the -- the orders that you attach are the result of a decision in a matter that he actually decided between the parties?

MR. ETKIN: That's correct, Your Honor.

THE COURT: Fine. Okay.

MR. ETKIN: The order in Worldcom was not a

stipulated order.

THE COURT: Okay.

MR. ETKIN: That I can tell you from personal experience.

THE COURT: Okay.

MR. ETKIN: Your Honor, even the debtors although they raise issues as to the precedential value of those decisions, they even concede in their papers that this precedent is at the very least highly persuasive, and measuring this case against the situations in Worldcom and Enron all involve the backdrop of massive accounting scandals with enormous losses to the investing public. All involve the backdrop of pending governmental investigations as well as internal investigations.

As the Court well knows, Your Honor, Enron and Worldcom were no less complex Chapter 11 cases than the Delphi case, and the parade of horrors that are speculated by the debtors as well as the standard floodgates argument that's conclusorily (sic) raised by the debtors in their opposition are exactly that: speculation and conclusory allegations.

I think the lesson to be learned is best learned from what happened in Worldcom where that company, the largest Chapter 11 filed managed to successfully reorganize. Enron as well successfully confirmed its plan, both with no ill effects from the limited stay modification orders entered in both of

those cases.

Your Honor, by making the motion that's before you, we are simply adopting a position and a procedure that has already been expressly approved in this district. Again, there's backdrop of Federal and civil criminal investigations, acknowledged significant accounting irregularities, years of accounting restatements, a self-imposed internal investigation commenced by the debtors, all strikingly similar to the backdrop of facts and circumstances in Enron and in Worldcom.

The debtors in their opposition make this appear as if this was a class action commenced willy-nilly by some corporate gadfly, the kind of class actions that the PSLRA presumably was intended to deal with.

Your Honor, as lead plaintiffs in this case appointed by the District Court, we have state pension funds and institutional investors, not individual corporate gadflies who take this matter very seriously on their own behalf and on behalf of the investors that they now represent as lead plaintiffs.

Your Honor, the debtors have really offered nothing in their opposition papers to dispute that the documents that we've requested which have already been produced have been set aside, have been culled, have been reviewed, have been indexed, and we specifically in our motion --

THE COURT: Well, don't they say that -- I thought

they -- I thought they dispute that.

MR. ETKIN: I don't see anything specifically in their papers disputing that. What I did read, Your Honor, is that there are statements that there's some -- some amorphous burden that they will at some point in the future attempt to bring before the Court. I didn't see anything specific in their papers. I thought that they reserved the right somewhere in their response to raise these issues or bring these issues before the Court at some later time.

I didn't see any indication that these documents have not already been set aside and have not already been produced, and essentially that's why we made the motion. We're not looking for documents that have not already been pulled together, set aside and produced.

THE COURT: Well, I -- I guess my question comes down to this. I understand that the orders in Enron and Worldcom, at least two of the three, you know, expressly recognized that lifting the stay in the bankruptcy case still leaves to be decided by the District Court the right of the securities plaintiffs to get access to the documents under the PSLRA, but you know, I'm not familiar with the facts of those cases. I don't know why it was important, for example, for those litigants to get the documents at that time or at least get stay relief at that time.

But why not let the District Court decide first

whether the PSLRA stay applies or not and then -- I mean, obviously, I would give you relief to the extent you needed it to seek that relief from the District Court, and then -- then I could decide on a record as to, you know, how -- how burdensome if at all under Sonax it is for the debtors to produce this under the 362 Sonax factors as opposed to deciding it somewhat in the abstract, because really I don't know what the District Court is going to do. I mean, is it prejudicial to you just to -- for me to say for now you're going to go to the District Court and ask the District judge if the -- if the PSLRA should be -- the stay under the PSLRA should be lifted, not the Bankruptcy Code stay, and then I -- then I can decide the latter stay issue and I can do that on an expedited basis?

I mean, you're going to have to do that anyway. So I don't understand why it's flipped the other way around.

MR. ETKIN: Well, Your Honor, we actually don't think that we flipped it. We think that we've followed the procedure that's been utilized --

THE COURT: Well, I understand. Just humor me for a minute. If you have to do it anyway, why should I decide this in the abstract?

MR. ETKIN: Well, Your Honor, I don't believe the Court is deciding this in the abstract --

THE COURT: But do I have to decide it at all? I mean, why should I -- why should I even spend any time on it if

it's -- if it's, you know, possible or even more than possible than the District judge is going to say, well, until the motions to dismiss are decided, -- I'm not going to give them relief from the PSLRA.

MR. ETKIN: The -- first of all, as the Court knows, we're acknowledging that this is a two-step process, and if the Court grants our motion, the debtor certainly does not -- does not have to produce a document until the PSLRA stay is lifted as well, and again, the Court actually alluded to an issue that is one of the issues why we went to the Bankruptcy Court first in both of those cases, which is that we believe that going to the District Court first without stay relief would be a violation of a 362 --

THE COURT: Well, but I could give you relief from the stay to go to the District Court. That's no problem. I don't have a problem with that.

MR. ETKIN: No, I understand you're saying that, Your Honor, but in terms of the process that we've utilized here, that's one of the issues that we took into consideration, and we believe that the issue of getting stay relief, this limited stay relief from this Court given the fact that these documents are just sitting there and have already been produced and it requires really no effort, and I understand --

THE COURT: But so that begs the questions. I mean, if the debtors are going to say it does require effort, then I

need to balance Sonax, and that requires a hearing and it may be a completely advisory or moot issue.

MR. ETKIN: Well, that -- the debtors had an opportunity to lay out in their opposition, Your Honor, what burdens that they would have to undertake in connection with producing these types of documents. They chose not to do that, and those really weren't issues in the prior cases and we suspect that they really shouldn't be issues here. The substantive issue of whether the PSLRA stay should be lifted is obviously a matter for the District Court, and we understand that.

We don't -- certainly don't view getting this type of limited stay relief a ministerial matter from this Court by any stretch of the imagination, but given the underlying circumstances, given what we're asking for, given the fact that we've already indicated in our moving papers that we would pay the cost of reproduction, there really is nothing else to do for the debtor other than if the debtor chooses resisting the motion before the District Court in the PSLRA -- in connection with the PSLRA.

So we believe that a process by virtue of the prior decisions has been outlined and we're attempting to follow that process. We believe that process makes sense because ultimately for purposes of the securities litigation, it is the District Court that makes the determination as to whether we

should get access on the merits prior to the motions to dismiss.

We're simply taking the first step that we believe is a process that's been endorsed in this Court previously.

THE COURT: Okay.

MR. ETKIN: And, certainly, Your Honor, and as evidenced by the orders entered previously in the -- in Enron and Worldcom, privilege issues that are raised can be dealt with. Those are lawyer-driven issues that can be resolved and certainly, nothing is intended to waive those rights to the extent that they -- that they still exist.

Your Honor, the bottom line is that the debtors in their papers really have advanced no argument whatsoever to distinguish this case from the circumstances in Worldcom and Enron.

THE COURT: Well, but the problem is I just don't really what those -- all I have is our orders. I don't really what those circumstances were. I don't know if they were under deadlines from Judge Harmon or Judge Cote. It's just -- I see that there's a -- there was an order granted and it recognized the type of relief you're seeking here, but I just don't know what the exigencies were to do it that way rather than the other way.

MR. ETKIN: Well, in each of those --

THE COURT: I don't know whether there was a hearing

on the Sonax factors either.

MR. ETKIN: Your Honor, in terms of the Sonax factors, I think in the first instance, the Sonax factors really are -- they are certainly relevant, but more relevant to circumstances where a party is seeking relief from the State and continue with litigation in a court outside of the Bankruptcy Court.

We're not seeking that kind of relief. There have been decisions which we have cited in our papers where limited stay relief --

THE COURT: No, I know. You're saying basically the debtor doesn't have to do anything. It just has to move the boxes from one place to another.

MR. ETKIN: That's --

THE COURT: And you'll pay for moving them.

MR. ETKIN: That's -- that's the bottom line, Your Honor.

THE COURT: Right. Okay.

MR. BUTLER: Your Honor, the Court articulated what our concern is. We concur that this is a two-step process, but we think the first step is in the District Court, not here. Our understanding of what these -- of what the plaintiffs in Enron and Worldcom did was once they got the stay relief from the Bankruptcy Court, they ran to the District Court and said hey, District Court, give us -- grant us the relief because

there's no reason why you shouldn't, we already got the Bankruptcy Court approval, and so they used Your Honor's determination as the sword to go into the District Court.

A couple of initial comments, Your Honor. This is not Enron, and this is not Worldcom. Whatever our pre-petition accounting issues were, they were not the proximate cause and had no relationship to the commencement of these Chapter 11 cases. These Chapter 11 cases were filed as Your Honor knows because of our high legacy costs, because of increasing commodity prices and because of the deterioration of the North American automotive industry. It had nothing to do with accounting.

Now, we had pre-petition accounting issues that we will be addressing, but that is not why we are in Bankruptcy Court.

Number two, Your Honor, what plaintiffs are asking for really is an advisory opinion from Your Honor. They're asking without any evidentiary record here, there's none. They've offered no evidence. All right. They basically said it's up to the debtors to prove why we're prejudiced. Well, Your Honor, they failed to meet their burden, which I believe under Sonax means we don't even have to do anything and --

THE COURT: Well, but they're saying that -- I mean, let me paraphrase it and Mr. Etkin can correct me. They're saying that it's there, why not let us get started on reading

it now rather than six months from now.

MR. BUTLER: Because, Your Honor, that's not what PSLRA allows them to do. They're asking you to give them here on an advisory basis the ammunition to go to Judge -- to go to Judge Rosen, who by the way, just got these cases within the last thirty days. Talk about infancy of a litigation. These were just consolidated. They're just now in front of the Court. There's been no major activity, as I understand, in the District Court since that act occurred.

This motion was filed thirty-eight days into our bankruptcy and was heard less than ninety days after the commencement of these cases without a scintilla of evidence as to why it's necessary. They are a year probably or more away from being able to deal with the issues in the District Court, and Your Honor, we don't think it's fair. We think it's highly prejudicial to the debtors to have them come in here and say to Your Honor without any evidentiary demonstration by us.

Disregard Sonax because that doesn't apply to us. Disregard -- just take the Enron opinions and the Worldcom opinions which were very different cases and which, by the way, Your Honor, I don't believe based on our review of the record and some familiarity that I had with those cases, I don't believe that the issue we've raised in our papers was raised in those cases, which is if it's a two-step process, the first step is that the plaintiffs have to go to District Court

and get relief from the PSLRA because then they're able to come here and demonstrate cause or at least argue they have cause. I'll argue that isn't even cause frankly when we get to that, but they can't demonstrate that.

They come before you with no ability to demonstrate any cause. They tell you -- if they're being straightforward, they tell you that Judge Rosen received these cases within the last thirty days. There has been no substantive activity in the cases since Judge Rosen received the consolidated cases. There's been no certification. There has been no -- the schedule set either for filing motions to dismiss.

You know, there -- you know, I mean, this is in such a different posture than those cases, Your Honor, and we really believe we have no issue. If they want to take a shot at -- you know, on that record in front of Judge Rosen on getting the PSLRA stay lifted, if they want to be able to do that and you want Your Honor -- we don't have an issue with that. We'll take that battle on in the District Court, but only if they're able to Judge Rosen to change what Congress had intended should they then be able to come back here, and at that point in time, we ought to have an evidentiary hearing and deal with the Sonax factors.

We think Your Honor has it exactly right, and we do think it's prejudicial, and you know, counsel can argue that it's not, but Your Honor, for example, to just give one example

and, you know, maybe this matters, maybe it doesn't, but the reality is, Your Honor, the accounting issues here while important to plaintiffs are not the primary factors in this case, and as Your Honor knows, we were retained in July of last year to help on the restructuring.

Clearly, we need to get up to speed and understand those issues at some point. That hasn't even occurred in these cases. We've been a little busy in the first ninety days of these cases doing a few other things like getting financing in place and dealing with claims, trading -- assets and all the issues we've dealt with, with the committee. We haven't had -- and Mr. Rosenberg will tell you, we haven't had even the opportunity to have the initial briefing with the committee on these matters which they've requested and which we've agreed to provide and both Mr. Rosenberg and I need to get a little educated from special counsel about these matters. Neither of us had that opportunity.

This is extremely premature, Your Honor, and we think highly prejudicial, and we think the plaintiffs have got it exactly wrong and the Court has got it right.

Go to the District Court, see if you can get relief. If you can get relief from the District Court, then at least you arguably can say you've got cause under Sonax here and then the -- then the debtors are in a position with the creditors committee and the other parties in this case to take on the

issue of whether or not in the balance of harms and prejudices which is a bankruptcy calculation by this Court whether or not Your Honor ought to then lift the stay or modify the stay in this case.

And we'd ask Your Honor to deny the relief being request other than giving them the limited opportunity to go speak to Judge Rosen.

THE COURT: Okay.

MR. ROSENBERG: Good morning, Your Honor. Robert Rosenberg for the creditors committee.

Our silence until now on the various matters of course indicates consent or assent agreement with the debtors' position, and that of course is equally true on this one. However, I believe on this one, the issues are sufficiently significant that we ought to address them on the record.

Needless to say, we do agree with the assessment that Mr. Butler just stated. As he stated, we are struggling to get educated on what the issues are in this case and what should happen to them.

As Mr. Butler indicated, this was not the driving factor here in arriving in Bankruptcy Court unlike Enron and Worldcom, and therefore, simply is not at this moment at the very top of the issue list.

We strongly agree with Your Honor that the -- the plaintiffs here simply have the procedure backwards because

there is no reason to consider the balance of prejudice kinds of issues under Section 362 until and unless the issue is ripe and relevant at the District Court issue -- level, and without an evidentiary hearing here, I daresay that I have a very hard time believing that there are a bunch of boxes sitting in a corner simply waiting for Federal Express pickup and that's all that's involved here.

To the extent that documents were previously delivered to a special committee at SEC, a justice department, whatever, that hardly suggests to me that they don't need to be entirely re-reviewed in connection with delivery to a private litigant, re-reviewed for privilege, re-reviewed for confidentiality, issues that may not be quite as relevant in the context of an internal or a governmental investigation.

So, unless the debtor tells me otherwise, I don't think this is a situation of saying to Federal Express come pick them up. Accordingly, I do think that an evidentiary hearing is required on the balance of hurt here and it is absurd to have one in a vacuum in a moot situation where the District Court has not said production is ripe.

Thank you.

THE COURT: Do you -- Mr. Rosenberg, do you remember when Enron filed? I'm just looking at these orders.

MR. ROSENBERG: I certainly do, Your Honor. December 2001.

THE COURT: Okay. Fine.

MR. ETKIN: Your Honor, obviously, the primary issue that's being raised is really somewhat of an chicken-and-egg proposition with respect to the District Court and this Court.

Mr. Butler talks about what Congress intended. I didn't see anything about the debtors' papers that pointed out some legislative history as to how to resolve that issue.

I think the only thing that the Court has to provide some guidance as to how that issue has been resolved is how it has, in fact, been resolved previously in the two cases that have addressed this issue, and I think that raising the question of whether the filing itself was precipitated by the accounting improprieties is not really the issue.

The issue is what is the stat of play with respect to those accounting improprieties going into the Chapter 11 proceeding, and there, the similarities are striking with respect to restatements for years, admitted accounting improprieties with respect to prior financial statements, multiple government investigations. There are no distinctions as far as that is concerned.

And, in fact, if there weren't those governmental investigations and if there wasn't the previous production of documents to the government with respect to these issues, we wouldn't be making this motion.

We're not seeking discovery from day one with respect

to our pending securities litigation. We're seeking access to documents that have already been produced, already have been reviewed, already have been indexed.

Now, Mr. Rosenberg talks about the prospect of having to review them again where the circumstances are different. Your Honor, those are red herrings. Those are roadblocks being thrown up now with respect to dealing with what is -- what is the obvious, and the obvious is that there's -- that there's no desire to impede the debtor from exercising whatever privilege objections that they might have or whatever privilege that they might want to assert.

The orders that were previously entered in the prior cases specifically provided for that. The Worldcom motion was hotly contested by the debtor. Judge Gonzales issued an opinion --

THE COURT: Well, no, he didn't issue an opinion.

MR. ETKIN: He signed an order. I apologize. He signed an order based upon his decision and requested an order to be presented. That order was signed. That order provides all of the safeguards that the debtor could possibly want with respect to those documents.

This is really an example of an effort to create issues with respect to what has been the prior production of documents that have been reviewed, indexed and are waiting to be -- and are waiting to be copied subject to privilege

objections which is lawyer-driven not debtor-driven, but a lawyer-driven process, and delivered over to the lead plaintiffs in connection with their obligations and responsibilities to move forward on behalf of the class that they represent with respect to the litigation against non-debtor third parties.

We understand what the PSLRA requires. That's a different showing to be made to a different court. The debtor does not have to do one thing until the District Court decides that issue, similar to what was decided in the Enron and Worldcom cases. There's no need for a chicken-and-egg issue. There's no need to reinvent the wheel with respect to how this process has worked previously. It should work no differently in this case.

THE COURT: Okay. All right.

I have in front of me a motion by the lead plaintiffs in the Delphi Corporation securities litigation for a limited modification of the automatic stay under Section 362 of the Bankruptcy Code to permit them to receive all documents previously provided by Delphi to third parties including, an internal audit committee investigation as well as the SEC and others.

The issue as I see it is really pretty limited at this point, which is an issue of timing. That is because the movants acknowledge that even if I were to lift the automatic

stay to permit the production of such documents, they could not be produced until the movants also obtained relief from the District Court presiding over the securities litigation under the Private Securities Litigation Reform Act of 1995, the PSLRA, which contains a separate stay driven by different considerations than the automatic stay, which separately currently stays the pendency of discovery in the underlying securities litigation.

To me, the first gatekeeper issue is obtaining relief from the stay -- relief from the stay in this court under Section 362 to seek relief from the PSLRA stay. That's the first gatekeeper issue.

In my mind, logically, the next gatekeeper issue is obtaining relief from the District Court under the PSLRA. The District Court is dealing obviously not only with that statute but with discovery issues generally in consolidated litigation that is clearly at a very early stage, and it seems to me that I cannot reasonably predict what the District Court would do in connection with an application for relief under the PSLRA for production of documents or what sort of timetable the District Court will set for the production of documents.

Given that fact, it seems to me that what I'm really being asked here to do to the extent it goes beyond a request for relief from the stay simply to go ask the District Court for relief under the PSLRA, is in essence to decide an issue in

a vacuum or to give an opinion that is not at this time ripe to be given.

To my mind, that would end the issue but for the fact that apparently at least in two instances, a similar issue was raised in the Bankruptcy Court in front of Judge Gonzales first in the Enron case and then second in the Worldcom case. The movants have attached orders issued by Judge Gonzales in those two cases, the first of which I note was issued very early in the Enron case and does not mention the PSLRA, and it's not clear to me whether this issue was even considered in connection with that order.

The second Enron order and the Worldcom order attached do specifically note that the relief granted to the securities litigation plaintiffs is still subject to any determination by the District Court presiding over the securities litigation, including under the PSLRA, but I cannot tell much more from those orders, which are just that: orders; they don't contain findings of fact, and there's no oral ruling that would lay out findings of fact and conclusions of law as to why Judge Gonzales granted that particular relief.

One of the things that's not clear to me is whether there were any communications directly or indirectly from Judge Harmon or Judge Cote, the judges presiding over the District Court litigation referred to in those two orders respectively, about the timing issues involved or the like.

So I think that not only as matter of judicial economy, but frankly to avoid deciding an issue that's not ripe, all that I will grant here today is relief from the stay to seek relief from the PSLRA stay in the District Court.

If such relief is granted and the facts will be clear as to what -- what discovery if any the District Court authorizes under the PSLRA and then I'll decide whether the automatic stay should in any way restrict that discovery. Frankly, if, in fact, it's simply a matter of picking up boxes and limited review by counsel, it may not be much of an issue.

On the other hand, I'm not going to get into the facts at this point because I think it's premature and there may be other considerations that are relevant under the Sonax factors.

Moreover, at that time, there may be a more complete discovery plan or a more complete litigation schedule that will help me decide the issue. So I will grant relief from the automatic stay for the limited purpose of seeking relief from the District Court under the PSLRA.

And, Mr. Etkin, I will carry the rest of the motion. You can put it on the docket on short notice. I don't think that there's a need to have a lengthy delay after the District Court rules.

MR. ETKIN: Thank you, Your Honor.

THE COURT: So I don't know which one of you should

submit an order to that effect.

MR. BUTLER: Your Honor, we'll draft an order and show it Mr. Etkin on that matter (sic).

Your Honor, also just so the record is clear today because I don't want either the debtors or the lead plaintiffs to be in a position to characterizing what occurred here today in front of the District Court along the lines, say, gee, Judge Rosen, you know, go ahead and approve this because it will -- you know, Judge Drain is ready to sort of, you know -- you know, open the floodgates here.

THE COURT: I think there are very different issues involved. I think the PSLRA addresses quite different issues than the automatic stay addresses and I wouldn't presume to give a District judge any sort of direction about how he or she should manage their discovery docket or the PSLRA, and really my ruling is based simply on, first, that deference and then issues of ripeness.

MR. BUTLER: And may the order also include a statement that the rights of the debtor and the creditors committee are fully reserved -- preserved in connection with the --

THE COURT: Yes. I mean, everyone's -- yes.

MR. BUTLER: I just think --

THE COURT: I think -- normally, I recommend people don't do that because then everyone wants to stand up and

reserve their rights, but I guess in this instance, it's appropriate so that there's no confusion with another court, but obviously, the class action plaintiffs' rights are fully preserved, too.

MR. BUTLER: We understand that, Your Honor.

THE COURT: Okay.

MR. BUTLER: Thank you very much, Your Honor.

Your Honor, the next matters on the agenda are Matters 33 and 34. These involve the application of the debtors for the retention of Deloitte and Touche, LLP as independent auditors and accountants to the debtors only with respect to the 2005 fiscal year that has been completed.

The debtors have previously announced that they have -- after a request for a proposal request that the debtors have engaged other accountants going forward and will be filing a separate application in connection with the retention of auditors for the 2006 fiscal years --

THE COURT: I think that's on my desk, actually. I think it's on my desk, isn't it? Yeah.

MR. BUTLER: Yeah. So it's -- that we'll be moving forward on that separately, Your Honor.

THE COURT: All right.

MR. BUTLER: Your Honor, the -- Matter No. 33 is lead plaintiffs' motion to compel deposition testimony filed at Docket Number -- I believe it's 1618 and we have filed --

debtors have filed a motion to quash at Docket No. 1666 and there have been other replies filed.

Your Honor, Deloitte and Touche, LLP was one of a handful, I think four or five entities that Skadden disclosed in our retention papers exceeded the one percent threshold in terms of revenues with the firm in connection with the guidelines and discussions of the United States Trustees' office and their protocol. Without acknowledging that there would be any conflict of interest here, we concluded that we should not handle this particular matter but defer to other counsel.

Normally, that would go to Mr. Togut and Mr. Berger, conflicts counsel, but Shearman Sterling who is special corporate counsel in this case had, in fact, been handling the Deloitte retention from the beginning because we recognized this in our pre-petition period and they've handling that, and therefore, they will be handling this matter today.

Mr. Roll will be dealing with Matter No. 33 in defending the debtors' interest there.

The Matter 34, my understanding the actual application, the only thing that's going to be dealt with today I believe are discovery matters which is Matter 33, and my understanding Matter 34, the actual merits of the retention of Deloitte and Touche I believe has been adjourned to January 13th as I understand the schedule.

THE COURT: Right.

MR. BUTLER: So, with that in mind, the only -- as to Matter 33, the lead plaintiffs -- litigation again, I'll cede the podium to lead plaintiffs, and Mr. Roll will defend the debtors' interests.

MR. ROLL: Good afternoon, Your Honor. William Roll of Shearman and Sterling appearing on behalf of the debtors.

As Mr. Butler indicated, Number 33 comprises competing motions by the debtors on one hand and by the lead plaintiffs on the other, the lead plaintiffs in the securities litigation raising essentially the same set of issues, the same three issues said to arise in connection with the debtors' application to -- for authorization to retain Deloitte for the limited purpose of the 2005 audit.

At the outset, Your Honor, I would say it is not a stretch to say that if Your Honor grants the lead plaintiffs the relief they're seeking in connection with Number 33, the motions I'm going to talk about, it will in effect moot much of the discussion the Court just had and much of the determination the Court just made with respect to the preceding motion on the lifting of the stay.

I say that because what the lead plaintiffs essentially are seeking to do here, that is in connection with the Deloitte application and the discovery issues in connection with the Deloitte application is to get discovery in connection

with the securities litigation.

THE COURT: Although they signed a confidentiality agreement saying that they won't use it.

MR. ROLL: They did sign a confidentiality agreement, Your Honor. It is a standard -- I think what most lawyers would consider a standard confidentiality agreement. It does restrict what they can do in many respects with the information they get, but it does not address the fundamental problem we see here which is they are asking for things as counsel for lead plaintiffs put it earlier when they said this is what they're not doing. This is, in fact, what they are doing.

They're asking for things that go back to day one in connection with the securities litigation, and I think the best illustration of that is to look at the actual document request that they've made.

Perhaps I should back up. The three -- the three issues before the Court raised by the competing motions are the propriety of their request to the debtors for documents about which I'll speak in a moment.

There -- having served trial subpoenas or subpoenas for the hearing in connection with the Deloitte application and all the members of the Deloitte audit committee and our motion to quash that and their effort to seek further testimony from Mr. Dellinger, Delphi's CFO who has already testified in a deposition with respect to the issues going -- the proper

issues going to the Deloitte application.

Mr. Dellinger declined on the basis of the attorney-client privilege to answer a number of questions put to him in that deposition.

With respect to my point earlier about they're trying to get at the things that Your Honor just said they should seek relief from the state first to be able to get. The document request they have made here makes it crystal clear that they're going way beyond what they should be trying to get in connection with the Deloitte application.

What they should be trying to get are documents relating to the general competence to complete the work with respect to 2005 and to do the 2005 audit and relating to Deloitte's disinterestedness under the Bankruptcy Code.

Instead, what they have sought is just about everything that the debtor has relating to Deloitte or indeed even accounting issues going back as far as 1999. I don't want to burden the Court with every element of their seven-page single-spaced request, but I do want to point out maybe a half a dozen that make this point very clearly.

They have asked, for example, that we produce -- and asked by the way that we produce this in essentially two business days -- all minutes of the meetings of the audit committee. All minutes of all meetings of the audit committee of Delphi from January 1, 1999 to the present. All memoranda

and reports submitted by Deloitte to the audit committee from that same date from January 1, 1999 to the present.

All memoranda and all reports submitted by Deloitte to the company relating to any problems encountered during any of Deloitte's -- any of Deloitte's audits of the company's financial statements again going back to presumably the beginning of time.

All memoranda on internal controls, management letters and similar documents submitted by Deloitte to the company or its audit committee again from January 1st, 1999 to date.

And the list goes on and on and on and on like that. These clear do not go to the issues that are properly -- or will be properly before the Court on the application to retain Deloitte.

THE COURT: And, just for the record, that application as to retain Deloitte to solely complete the 2005 tax audit?

MR. ROLL: To complete the audit of the company's financial statements for 2005 and --

THE COURT: So they're not providing any other services in the bankruptcy case?

MR. ROLL: Not to my knowledge, Your Honor. So it is limited to that --

THE COURT: And -- and it's a different engagement

team?

MR. ROLL: It is a different engagement team. The papers submitted by the debtors in support of the application to retain Deloitte make that clear. In particular, the affidavit from the Deloitte partner who will be heading the engagement team makes clear that it's a different team.

I believe Mr. Dellinger when he testified in his deposition at the lead plaintiff's behest testified to that same point. So the issue -- that issue has been addressed.

THE COURT: Okay.

MR. ROLL: And the kinds of things that the lead plaintiffs are looking for as illustrated by those requests that I read to the Court simply don't go to that kind of an issue.

You know, I'm going to refer to Worldcom, too, but I have the easiest task with respect to the decision there. Whatever that -- that case may have said or whatever the judges -- any judge in that case or any other case may have said with respect to whether lifting the stay was appropriate or not, it is without doubt the case and others like it at least stands for the proposition that if there is a stay in place then you cannot use the bankruptcy process to get discovery in connection with the stayed litigation, and that's precisely what the lead plaintiffs are trying to do here, not just in connection with the document request as indicated, but also

with respect to their entire discovery effort related to the -- to the Deloitte application.

That's the first issue, the documents. The second issue, the second main issue or set of issues relates to the subpoena served on all of the members of the Deloitte audit committee. First of all, the lead plaintiffs know or at least should know one of the four individuals who were subpoenaed is in Brazil, not here in New York, and it would be to say the least a significant hardship for that gentleman to come here to testify just at their behest in connection with this application on issues as we see it are not necessary to a court's determination of that issue.

Secondly, there's another member of the audit committee, Mr. Walker, who the lead plaintiffs know or should know has only recently joined the audit committee and clearly by any objective measure has not been involved in issues relating to the restatement, Deloitte's work in connection with -- with Delphi previously or anything like that.

That leaves only two, and even those two are unnecessary because as the debtors have said it and conveyed to the lead plaintiffs from the start, everything they need to get in terms of the debtors' reasoning for wanting to employee Deloitte on the limited basis we're asking to do can be obtained and could have been obtained from Mr. Dellinger, the company's CFO, who we did make available promptly for a

deposition, and I would add that the lead plaintiffs, they were offered several hours of his time and used only a couple hours of his time.

THE COURT: Is he the only witness that the debtors would call at the hearing?

MR. ROLL: He is -- he's one of two, Your Honor. We would intend to call Mr. Plumb as well.

THE COURT: From Deloitte.

MR. BUTLER: From Deloitte. I would note that as to Mr. Plumb, the plaintiffs have made no effort to depose him, and I should also note, and I think this is very telling. The retention of Deloitte, the retention of any professional is an important matter for any debtor and for the estates, only the lead plaintiffs here have sought discovery of this sort in connection with this application.

The creditors committee has not. The U.S. Trustee has not indicated any need to see anything further. No other party in interest has come forward and said, yes, we'd like to see a whole bunch of information that we think goes to whether or not Deloitte should be retained for the limited purpose that the debtors are trying to retain it for.

Clearly, on a very sort of pragmatic level, that illustrates that the lead plaintiffs are pursuing a very different agenda here from the one that all of the players properly on this stage are pursuing. They are, in fact,

pursuing an agenda that's appropriate for their stage, for the securities litigation where they are big players, but they're not big players here, and they shouldn't be seen as that in connection with this -- with this very important matter to the estate.

That's the subpoenas to the audit committee. It's unnecessary. It's cumulative. Two of the individuals wouldn't even be appropriate in any event, and on top of that, I would also say that if one reads the transcript of Mr. Dellinger's deposition testimony, it's apparent that the members of the audit committee in all likelihood could -- could only duplicate in effect the factual items that he has testified to already with respect to the importance to the debtors of having -- of having Deloitte retained for the limited purpose of 2005.

Finally, on the issues arising from Mr. Dellinger's deposition testimony, it's a slightly different set of issues there. The problems that the lead plaintiffs have with his testimony don't go to so much whether or not his -- his testimony is appropriate for the Deloitte application versus the securities litigation but rather to our assertion in a number of limited instances that -- that what they are asking for and look what they were asking for him to testify about would have necessarily divulged attorney-client protected information.

And to be a little more specific, in a number of

instances, it -- Mr. Dellinger had made clear that his knowledge with respect to certain items derived entirely from discussions he had and meetings he attended with counsel for the company and only counsel for the company and others affiliated directly with the company.

That's a classic situation calling for a proper end location of the attorney-client privilege. When the lead plaintiffs continue to probe on -- on those meetings, the instruction was given that he not answer and he followed that instruction.

It's not for me to suggest to the Court what it should do on this, but I would say that if one -- if anyone were to read the transcript of Mr. Dellinger's deposition testimony and it's not that lengthy -- it's only about seventy pages -- it becomes clear very quickly that what was going on there was the sort of thing that goes on at just about every deposition in any litigation in this country every single day. There are questions that on their face and as amplified by testimony from the witness would -- would invade the privilege if there's an instruction not to answer and the witness follows that instruction.

There was no effort made to impede the lead plaintiffs' ability to get at Mr. Dellinger's knowledge with respect to the urgency of getting Deloitte employed or having them go back to work and having them do the work necessary to

complete the 2005 audit. Indeed, he was fully prepared to talk about that.

He was prepared and did talk about what he understood about Deloitte's qualifications generally to do the work --

THE COURT: On the privilege point, the plaintiffs contend that the privilege was asserted on the basis that the lawyer was present as opposed to that the lawyer was giving legal advice or was reasonably expected to be giving legal advice and the like.

MR. ROLL: It is true, Your Honor, that that's what they assert, but it's -- it's not quite right. The privilege was asserted on the basis that the knowledge gained by Mr. Dellinger on the subjects being inquired about came from a discussion with counsel and counsel's client where there was an exchange of communication relating to the rendition or requesting of legal advice.

It's as simple as that. It's not just that counsel was sitting in the corner and two people at the company or two or more people at the company including Mr. Dellinger were talking in the same room about things that would otherwise not be privileged.

THE COURT: And counsel wasn't just reporting on prior meetings?

MR. ROLL: Not to my knowledge. My knowledge isn't even what's important here. Mr. Dellinger's knowledge on this

is important and, in fact, we have added his elaboration of what happened at those meetings to the record. We submitted a declaration by Mr. Dellinger following his deposition and following these disputes arising where he went into in more detail who was present at those -- there were four meetings, and what happened and who said what, all going to the point, the general point of his only knowledge relating to these issues being inquired about, these accounting issues being inquired about having come from his having heard that discussion and having been a part of it with counsel.

Mr. Dellinger is here today. So, if there's any further doubt about the circumstances giving rise to the proper end location of the privilege, if there's any doubt remaining after our having submitted Mr. Dellinger's declaration, I'm sure he'd be more than happy to lay that doubt to rest with additional testimony.

I don't know what the Court has in mind with respect to that, but he's here and he's more than happy to talk about that.

So all of that leads me to say -- and I don't mean to minimize the importance of these kinds of issues, but the attorney-client privilege problems here raised by the two parties, the two sides' motions are garden-variety deposition. They're garden-variety attorney-client privilege assertion-type issues. Indeed, and I mean no disrespect to the lead

plaintiffs, but I feel duty-bound to say this as well, if they really had a problem with -- a true problem with the assertion of the privilege, they were duty-bound to inquire a lot more than they did at the deposition about the circumstances in which the conversations occurred.

As we all know, it's counsel's duty to make an appropriate record if counsel thinks that the -- that the privilege is being asserted improperly. Here, the privilege was asserted. The instruction was given. The witness followed the instruction. Counsel made a complaining statement and basically moved on.

Even in the face of that, we submitted the Dellinger declaration to try to set the record straight and as -- set it straight as fully as we could about why the privilege was invoked and why we believe it to have been appropriate here.

THE COURT: Okay.

MR. ROLL: Thank you.

MR. SABELLA: Your Honor, Jim Sabella from Grant and Eisenhofer for lead plaintiffs.

Let me say at the outset that the issue of the PSLRA stay in this context I believe is a complete red herring. Whether or not any of the discovery we seek here could or could not be relevant to the securities litigation doesn't matter. What matters is, is the discovery sought here relevant to the application that the debtors made to retain Deloitte, and

recall, we didn't initiate this proceeding.

If they weren't insistent on keeping Deloitte for the 2005 audit, we wouldn't be here seeking any of this discovery.

So the issue is simply whether the discovery is relevant there. We can't use the discovery in the securities litigation because we signed the confidentiality order that they drafted and put before us the day of the deposition, and we signed it without changes. There have been cases in this court and perhaps the best one is a called Recotin (phonetic) which we cite in our reply papers at 307 BR 751 where another judge in this court specifically said if discovery is relevant to something going on here, the fact that there's a securities litigation stay in another proceeding doesn't matter.

Is the discovery relevant here? Our objection to Deloitte is twofold. One is incompetency and the second is conflict of interest, and let me talk about the competency a little bit.

We know that there were major problems with Deloitte's audits of the preceding year's financial statements. How do we know that? Deloitte gave clean opinions that the accounts were presented in accordance with generally accepted accounting principles.

Now the audit committee did an investigation and they've restated all those financial statements and they've said that major transactions were improperly accounted for.

Now, we don't know exactly why Deloitte got it so wrong. We don't know whether it was -- at this point, whether it was the fault of just a couple of bad auditors in which case perhaps changing the audit team might make a different or whether or not it was deficient audit procedures, and if it's the latter, what assurance do we have that Deloitte is going to get it right this time? None whatsoever, and that's why we're probing. What did Deloitte get wrong? Why did it happen? What did the audit committee find out when it -- when it did its investigation which led to these major restatements? They blocked all of that.

Counsel talks about the alleged burden in some of our document requests, but recall, they didn't take us up on our offer to try to renegotiate the burden, to try to have a limitation on what we were seeking. They gave a blunderbuss objection, not one piece of paper.

So I think the burden aspects or the overbroad aspects that counsel was suggesting are not what's going to carry the day here. They have taken the position we're entitled to know nothing about what Deloitte got wrong. We're entitled to know nothing about what the audit committee looked at when it made its restatements. What did it find out about Deloitte's procedures? What assurances did it get Deloitte is not going to blow it again?

We're not entitled to know anything about that. They

won't give us any documents. They won't give us any testimony.

Now, we've also talked about the internal controls aspect of the competence. Deloitte was required at the time it did its audits to give advice on internal controls and the adequacy of internal controls. The company has now said there were material weaknesses in internal controls during the years that Deloitte did those deficient audits.

So we've asked what did Deloitte tell you about the internal controls? Did they identify those problems? If not, why not? Did the audit committee look into that and find out how did they miss those serious material weaknesses in internal controls. They won't tell us, won't give us any documents, won't even give us the management letters that Deloitte gave to the company at the time when it purported to report on internal controls.

So how does one appraise -- how do you get your arms around whether or not Deloitte is up to the job to do the 2005 audit when we have no idea how it happened that they got it so wrong in 2001 and 2002 and 2003.

THE COURT: Hasn't every accounting firm, every large accounting firm gotten it wrong in connection with at least one large company in the last several years? I mean, can't you take your argument to the extent that, you know, you could discovery of -- in connection with name whatever disaster any accounting firm was involved in, you know. Merry-go-round, for

example, for E&Y.

You know, I mean, I'm just trying to figure out how far you could take that.

MR. SABELLA: Well, I wouldn't take it there, Your Honor.

THE COURT: I mean, they couldn't hire Grant Thornton, right, because they've been sued? They couldn't hire any of them.

MR. SABELLA: But the point is we know that Deloitte's --

THE COURT: If they've had restatements.

MR. SABELLA: -- that the relevant Deloitte procedures dealing with this company in this industry and the kinds of problems that these audits present were insufficient. Okay. Sure, every accounting firm gets sued, but we know that something very wrong went wrong on these audits, with this company, and doesn't the Court want to know why? I mean, are you going to just pay them an audit fee for 2005 and say, well, they got it wrong last time but I'm sure they'll get it right this time.

I think we're entitled to a little more than that.

THE COURT: Well, maybe, although you might posit to the contrary that they'll be walking on eggshells and doing everything they can to get it right. You know, so they are absolutely blameless --

MR. SABELLA: Well, I don't think so, Your Honor, for the following reason. They're a defendant in the securities litigation. To the extent that they really dig here and they find additional weaknesses in internal controls, additional errors in accounts, additional contracts that were improperly accounted for, they're digging their own grave in the securities litigation. They're not going to want to do that.

THE COURT: That's a different point. I understand that point.

MR. SABELLA: Right. That's a conflict of interest point.

THE COURT: I understand that point.

MR. SABELLA: And I think it's a serious one.

Now -- so that essentially is our argument on the relevancy of at least some discovery. If they want to limit the documents, we can try to do that, but I think we're entitled to some discovery on some of these issues, and they've blocked all of it. If it's relevant, the PSLRA stay has nothing to do with it.

Now, counsel talked a little bit about the Worldcom case that he cites in his brief, which I think we've adequately distinguished in our reply brief, and it was a totally different situation. That was a situation where the people wanting discovery about KPMG, they waited a year after they knew about the disqualification-related issues and it

really smelled that all it was, was an effort to get discovery for use in another proceeding, and in that case, the company said, we are so sure KPMG is okay here that we are not going to sue them no matter what comes out.

They went -- they went on the record as saying we don't have any claims against KPMG. Debtor has not done that here with respect to Deloitte. There's been no waiver of the potential that the debtor is going to sue Deloitte or Deloitte is going to sue the debtor, and as Your Honor knows, in most of these accounting fraud situations, it's ultimately what happened. They point the finger at each other. So this is very different from the Worldcom case that counsel relied on.

Let me talk briefly about our desire to depose --

THE COURT: What more discovery do you need knowing that there's already a lawsuit against Deloitte and, therefore, potential claims going back and forth by the debtor? Why do you need more discovery? Can't you point to a potential conflict right there?

MR. SABELLA: Yes. I think on the conflict point you don't need a lot more discovery. I think it's more on the competency issue that you need discovery.

THE COURT: And isn't that the case particularly since E&Y is going to do the 2006 audit so they can certainly see if there are, you know, improper procedures that had been in place, and again Deloitte needs to be pretty concerned that

it get it right in 2005 because another firm is going to be looking over their shoulder in 2006?

MR. SABELLA: Well, I don't think that's exactly right, Your Honor, because I mean, in 2006, Ernst & Young is going to be the 2006 audit, and it will be -- it will not be re-auditing 2001 or two or three or four or five --

THE COURT: No, but it's going to look at what --

MR. SABELLA: It's going to look at what Deloitte did --

THE COURT: As far as, you know, controls and procedures as concerned that are in the company.

MR. SABELLA: Yeah, but if Deloitte should come across some bodies in the closet in the context of this audit, I think they have more incentive than anyone in the world to make sure they don't come to light and to make it more difficult not less difficult for Ernst & Young to find it.

THE COURT: Okay.

MR. SABELLA: The additional discovery that we're seeking in addition to documents as counsel referred to is to examine a couple of members of the audit committee, and we'd be happy not to take the fellow in Brazil and not to take the fellow that just joined. I mean, you know, we're willing to negotiate those things.

The reason why we wanted members of the audit committee and not just Mr. Dellinger is number one, it's the

audit committee that made the decision to stay with Deloitte for 2005 and it's the audit committee that made the decision to go with Ernst & Young for 2006, and we wanted to know what the audit committee knew, what it considered.

Mr. Dellinger didn't know obviously what conversations the audit committee members had among themselves. He obviously didn't know what conversations they had with Deloitte. Did they probe with Deloitte whether -- what assurances Deloitte could give about the 2005 audit? He didn't know anything about that. He never discussed the restatements with Deloitte. He appeared not to know much about what the audit committee investigation showed and what little he knew, he refused to testify about either on the grounds of scope or on the grounds of privilege.

So we'd like to probe the audit committee. He didn't even know if the audit committee considered the conflict issue that Deloitte would have an incentive not to look back at prior transactions that might have been improperly accounted for. He didn't even know if the audit committee considered that.

So it seems to me that at a minimum we ought to get to Question 1 or 2 of the real decision makers who made the decision. He's been on the job for a month or two. The audit -- the process of looking for a new accounting firm which ended up with Ernst & Young being appointed, that process began before Dellinger was hired. Somebody else made that decision

that we'd better be looking for another accounting firm.

And it's interesting, when they made their application in this Court to retain Deloitte, the application said they wanted to retain Deloitte for 2005 and thereafter although they had already put in progress the idea of getting a new accounting firm.

But, in any event, Dellinger wasn't there at the time they made those decisions. We asked them for all the documents that related to the decision to switch to Ernst & Young or the decision not to go with Deloitte and the decision to retain Deloitte and they didn't give us any documents on those either.

THE COURT: Okay.

MR. SABELLA: So it seems to me the testimony from a couple of people there is not overly burdensome, and it's clearly, clearly relevant to what we want to do, and the objections that we filed.

Lastly, on privilege, counsel suggests that it was much more than a lawyer just sitting in the room, but when you look at the questions that I asked at that deposition, there was no suggestion that what I was getting at in any way related to legal advice.

I asked questions such as: Did any members of the audit committee say let's stick with Deloitte for 2006? Objection; privilege. There was a lawyer in the room. Did anybody say let's get rid of Deloitte for 2005? Objection;

privilege.

THE COURT: Is that -- I confess, I looked at the transcript very quickly. It seemed to me that that response was basically because he didn't really know except because what a lawyer told him. He wasn't there, right?

MR. SABELLA: He was at the audit committee meeting.

THE COURT: HE was?

MR. SABELLA: Oh, yes. Yes. What --

THE COURT: All of them?

MR. SABELLA: He was at the two key audit committee meetings, December 6th and December 7th when they made these decisions.

THE COURT: Not -- not the four.

MR. SABELLA: The point about what he knew came from what lawyers told him, that relates to the audit committee investigation, the restatements and the material weaknesses in internal controls. Basically, he said anything he knew about the investigation is what a lawyer told him, but even there, is that the conveying of legal advice.

I asked him who did the audit committee interview in the context of their investigation. Did they interview Deloitte people. Who did they interview? Objection; attorney-client privilege. He would have learned that from counsel.

Well, how is that conveying legal advice when you ask someone who did they interview and my lawyer told me these are